

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

MICROSOFT CORPORATION, OPENAI,
INC., OPENAI LP, OPENAI GP, LLC,
OPENAI, LLC, OPENAI OPCO LLC, OPENAI
GLOBAL LLC, OAI CORPORATION, LLC,
and OPENAI HOLDINGS, LLC,

Defendants.

Civil Action No. 1:23-cv-11195 (SHS) (OTW)

DAILY NEWS, LP, et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION, et al.,

Defendants.

Civil Action No. 1:24-cv-3285 (SHS) (OTW)

THE CENTER FOR INVESTIGATIVE
REPORTING, INC.,

Plaintiffs,

v.

OPENAI, INC., OPENAI GP, LLC, OPENAI,
LLC, OPENAI OPCO LLC, OPENAI GLOBAL
LLC, OAI CORPORATION, LLC, OPENAI
HOLDINGS, LLC, and MICROSOFT
CORPORATION,

Civil Action No. 1:24-cv-4872 (SHS) (OTW)

Defendants.

STIPULATION AND PROPOSED [ORDER] REGARDING PROTECTIVE ORDER

WHEREAS, the parties previously agreed that the Stipulated Protective Order entered in the case brought by The New York Daily News (ECF 129, No. 1:24-cv-03285-SHS-OTW) (“*Daily News Case*”) rather than the Stipulated Protective Order originally entered in the case brought The New York Times Company (ECF 127, No. 1:23-cv-11195-SHS-OTW) (“*The New York Times Case*”) will govern both the *Daily News Case* and *The New York Times Case* (ECF 303, No. 1:23-cv-11195-SHS-OTW).

WHEREAS, the parties now agree that the Stipulated Protective Order entered in the *Daily News Case* (ECF 129, No. 1:24-cv-03285-SHS-OTW) will also govern the case brought by The Center for Investigative Reporting, No. 1:23-cv-4872-SHS-OTW (“*CIR Case*”), rather than the Stipulated Protective Order originally entered in the *CIR Case* (ECF No. 129, No. 1:23-cv-4872-SHS-OTW).

WHEREAS, the parties have agreed that materials designated “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to the terms in the Stipulated Source Code Order filed at Dkt. 252 in *The New York Times* action, Case No. 23-cv-11195.

WHEREAS, Microsoft and the *Daily News* Plaintiffs have agreed to a modification to Paragraph 14 of the Stipulated Protective Order (ECF 129, No. 1:24-cv-03285-SHS-OTW), as set forth in more detail below.

WHEREAS, the parties have also reached agreement to modify the Stipulated Protective Order (ECF 129, No. 1:24-cv-03285-SHS-OTW) to include an additional “Outside Counsel Only” confidentiality designation, as set forth in more detail below.

THEREFORE, the Parties, through counsel, agree as follows:

1. All parties agree that the Stipulated Protective Order previously entered in the *Daily News Case* (ECF 129, No. 1:24-cv-03285-SHS-OTW) will govern these consolidated proceedings.

2. The parties request that the Court modify the Stipulated Protective Order (ECF 129, No. 1:24-cv-03285-SHS-OTW) to clarify that materials designated “HIGHLY CONFIDENTIAL – SOURCE CODE” shall be subject to the terms in the Stipulated Source Code Order filed at Dkt. 252 in *The New York Times* action, Case No. 23-cv-11195.

3. The parties request that the Court enter the following modifications to Paragraph 14 of the Stipulated Protective Order (ECF 129, No. 1:24-cv-03285-SHS-OTW), as reflected in the underlined, red text.

14. No person subject to this Protective Order other than the producing party shall disclose any of the Discovery Material designated by the producing party as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” to any other person whomsoever, except to:

- (a) the recipient’s outside counsel of record in this action, as well as employees of said outside counsel of record to whom it is reasonably necessary to disclose the information for this litigation;
- (b) Except as otherwise provided in subparagraphs (i) and (ii) or in this subparagraph (b), designated inhouse counsel of the recipient to whom disclosure is reasonably necessary for this litigation, provided such person has first executed an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto. Within 30 days of the entry of this Protective Order, a receiving party may designate by name, in writing, up to five (5) in-house attorneys who are permitted to view materials designated “HIGHLY CONFIDENTIAL–ATTORNEYS’ EYES ONLY,” provided that any attorneys so designated may not have a role through

which they could use such materials to engage in Competitive or Editorial Decision-Making.¹ In addition to the foregoing, and with respect to materials designated as HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY by Microsoft, the following individuals designated by The Times—A.G. Sulzberger, Meredith Levien, Diane Brayton, and Rebecca Grossman-Cohen, so long as (1) those documents do not relate to actual or potential licensing/data access agreements or negotiations regarding such agreements, and (2) each of these individuals executes an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto. In addition to the foregoing, and with respect to materials designated as HIGHLY CONFIDENTIAL—ATTORNEYS' EYES ONLY by Microsoft, the following individual designated by the *Daily News* Plaintiffs—Frank Pine, so long as (1) those documents do not relate to actual or potential licensing/data access agreements or negotiations regarding such agreements, and (2) Mr. Pine executes an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto.

¹ “Competitive or Editorial Decision-Making” means the action or process of making a business or journalistic decision or resolving a non-legal question relating to a competitor, potential competitor, customer, journalist, opinion writer, editor, video producer, audio producer, or distribution partner regarding contracts, marketing, pricing, product, service development or design, product, or service offering, research and development, mergers and acquisitions, or licensing, acquisition, funding, enforcement of intellectual property, publishing, writing, editing, broadcasting, or public speaking. It does not include legal advice provided in connection with litigation, potential litigation, or regulatory matters, nor does it include work performed as part of a trial team or to keep management advised on the progress or status of litigation, potential litigation, or regulatory matters.

- i. Agreements or draft agreements between a producing party and a third party, as well as documents reflecting negotiations or communications regarding such agreements, may be designated ‘HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY.’ In-house counsel of the recipient shall not be permitted to access such information absent explicit written permission from the producing party and the relevant third party.
- ii. For the avoidance of doubt, to the extent expert reports cite to materials designated ‘HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY,’ in-house counsel may review those reports so long as such material is redacted. In-house counsel may not access documents designated ‘Outside Counsel Only’ even if such documents are cited in or appended to expert reports.

(c) experts of the recipient to whom disclosure is reasonably necessary for this litigation, provided such persons have first executed an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto;

(d) the court and its personnel; court reporters and their staff, professional jury or trial consultants, and professional vendors to whom disclosure is reasonably necessary for this litigation, provided such persons have first executed an Undertaking to be Bound by Protective Order in the form annexed as an Exhibit hereto; or

(e) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

SO STIPULATED AND AGREED.

Dated: March 18, 2025

/s/ Ian Crosby

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SO ORDERED.

ONA T. WANG
United States Magistrate Judge

Dated: _____
New York, New York

ATTESTATION

Pursuant to S.D.N.Y. Electronic Case Filing Rule 8.5, I hereby attest that all other signatories listed, and on whose behalf the filing is submitted, concur in the content and have authorized this filing.

Dated: March 18, 2025

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